

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ZEXI LI

Plaintiff

and

CHRIS BARBER, BENJAMIN DICHTER, TAMARA LICH, PATRICK KING and
JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, JOHN DOE 4, JOHN DOE 5,
JOHN DOE 6, JOHN DOE 7, JOHN DOE 8, JOHN DOE 9, JOHN DOE 10,
JOHN DOE 11, JOHN DOE 12, JOHN DOE 13, JOHN DOE 14, JOHN DOE 15,
JOHN DOE 16, JOHN DOE 17, JOHN DOE 18, JOHN DOE 19, JOHN DOE 20,
JOHN DOE 21, JOHN DOE 22, JOHN DOE 23, JOHN DOE 24, JOHN DOE 25,
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JOHN DOE 46, JOHN DOE 47, JOHN DOE 48, JOHN DOE 49, JOHN DOE 50,
JOHN DOE 51, JOHN DOE 52, JOHN DOE 53, JOHN DOE 54, JOHN DOE 55,
JOHN DOE 56, JOHN DOE 57, JOHN DOE 58, JOHN DOE 59 and JOHN DOE 60

Defendants

Proceeding under the *Class Proceedings Act*, 1992

FRESH AS AMENDED FACTUM OF THE PLAINTIFFS
(*MAREVA* INJUNCTION)

-2-

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FACTUM

PART I - OVERVIEW

1. The residents, business-owners, and employees of Ottawa have suffered immensely through the actions of the so-called Freedom Convoy. They have suffered, not because of the mere fact that the Freedom Convoy have chosen to exercise their right to protest. Rather, residents and small-business owners have suffered because of the *way* in which the Freedom Convoy members have chosen to exercise that right. The Freedom Convoy's tactics have included:

- (a) Honking horns and air horns, emitting noise in the range of 100 to 150 decibels, for 12 to 16 hours per day;
- (b) Playing loud music and setting off fireworks unexpectedly; and
- (c) Having their trucks remaining parked on public streets indefinitely, with their engines idling for 24 hours per day, leading to diesel fumes downtown.

2. This is not a matter of a single-day demonstration, which residents and business owners accept is the *quid pro quo* of living in a major urban center. Rather, this has been a prolonged and significant interference with the rights of Ottawa residents. It is a private nuisance and a public nuisance. That is incontrovertible.

3. The residents, business-owners, and employees of Ottawa deserve to have the opportunity to vindicate their rights for the harms that have been inflicted upon them for weeks. They deserve compensation for the harms caused. Yet without some measures to preserve assets that might be available to satisfy their claims, they will have no chance of recovery. This is not a claim against a deep-pocketed defendant with a massive insurance policy; this is a claim against Freedom Convoy

organizers, primarily individuals: the individuals who are directly responsible for promoting and continuing the ongoing nuisance causing harm to the plaintiff and potential class.

4. There is just one potential source for any meaningful recovery that is known at this stage: the funds that have been raised by the Freedom Convoy. Several of the Defendants hold funds that have been raised to support the efforts of the Freedom Convoy.

5. The Plaintiffs seeks a *Mareva* injunction over those assets to prevent them from being dissipated. They are in all likelihood the only meaningful source of funds that can fund any recovery for the residents. To provide any hope of the residents receiving compensation, this Court must order a *Mareva* injunction over those assets.

6. This is a targeted motion to freeze only particular assets of particular people. It is not directed at every defendant, nor is it directed at all of the Freedom Convoy's funds, nor is it directed at every single asset of each of the Defendants. Rather, the order sought is a limited one, directed only against:

- (a) Assets held by six Defendants who were centrally involved in the unlawful conduct—Patrick King, Tamara Lich, Chris Garrah, Nicholas St. Louis (a.k.a. @Nobodycaribou), Benjamin Dichter, and Freedom 2022 Human Rights and Freedoms Inc (collectively, the “**Mareva Respondents**”);
- (b) Where those Defendants have taken steps or stated an intention to take steps to dissipate those assets; and
- (c) Where those assets were raised in connection with the Freedom Convoy assets (so that no one's home is being encumbered).

7. For the Mareva Respondents and their assets, all the requirements are easily met:

- (a) The evidence establishes a strong *prima facie* case for the claims of the Plaintiff and the proposed class members. The unlawful conduct and interference with the daily lives and livelihoods of the residents of Ottawa is open, pervasive, and notorious. This conduct amounts to both public and private nuisance, and the damages to the proposed class members—including those sub-classes of residents, businesses and employees—are likely to be in the hundreds of millions of dollars. Each of the Mareva Respondents against whom this motion is brought were important participants in the unlawful conduct.
- (b) The Mareva Respondents have made repeated efforts to evade growing restrictions on their funding and operations. They have publicly stated that they have turned to cryptocurrency (such as Bitcoin) financing to avoid such restrictions, and have publicly stated that they will be taking steps to dissipate those and other funds. That dissipation would cause irreparable harm to the Plaintiff and all of the proposed class members; and
- (c) The balance of convenience favours granting the injunction sought by the Plaintiffs. The Order is narrowly tailored to have a limited impact on the Mareva Respondents. By contrast, there is a strong prospect that if a *Mareva* injunction is not granted, the proposed class members—who have been targeted and intentionally victimized for weeks now—will likely recover nothing at the end of the day in this litigation. The Court should not countenance that result, particularly where the claims of the proposed class members are so meritorious, and the public disdain for, and

calculated attempts to evade, the rule of law shown by the Defendants (and the Mareva Respondents in particular) are so flagrant.

PART II - SUMMARY OF FACTS

THE FREEDOM CONVOY

8. On January 28, 2022, a large group of individuals who call themselves the “Freedom Convoy” descended on Ottawa with the apparent purpose of pressuring the government to agree to repeal all public health measures regarding the COVID-19 pandemic. The tactics they selected and used to create that intended pressure include the unlawful conduct described below. By Saturday, February 12, 2022, it was estimated that over 4,000 demonstrators were present in downtown Ottawa for the Freedom Convoy protest.¹ Leaders of the Freedom Convoy, including some of the Defendants, have asserted that they will stay in Ottawa until their demands are met.

9. Since the Freedom Convoy protest started, the Freedom Convoy participants, including Mareva Respondents, have engaged in, encouraged, and facilitated unlawful conduct, such as:

- (a) Persisting in using vehicle horns and causing significant noise-related disturbances (now in defiance of the Honking Injunction);
- (b) Occupying the roads and sidewalks of downtown Ottawa with idling vehicles and semi-permanent encampments;
- (c) Polluting the air with diesel fumes from hundreds of idling vehicles and dispersing jerry cans of fuel for the purpose of fueling those idling vehicles;

¹ Affidavit of Jeremy King, sworn February 15, 2022 (“King Affidavit”) at para. 115.

- (d) Blocking access to sidewalks and roadways while being loud and aggressive demonstrators; and
- (e) Setting up portable toilets, free food and drink stations, makeshift outdoor kitchens and firepits and performance spaces, all in downtown Ottawa.

10. The Freedom Convoy Protestors' conduct is not isolated conduct perpetrated by rogue protestors. Rather, it is a concerted effort, encouraged by the Freedom Convoy's organizers and the Mareva Respondents, to pressure the government, in many cases in contravention of by-laws and court Orders, and in spite of the significant impact on the Plaintiffs and the proposed class.

THE UNLAWFULNESS OF THE FREEDOM CONVOY'S TACTICS

11. There can be no question that the tactics of the Freedom Convoy are unlawful. While the particulars of that unlawful conduct and the impact on class members are described in further detail below, it suffices to note that several courts have already recognized that there is a strong basis to believe that the conduct is unlawful:

- (a) On February 4, 2021, this Court granted an injunction to restrain continual horn honking at extreme volumes for hours at a time (the "**Honking Injunction**");
- (b) On February 14, 2022, the City of Ottawa sought an injunction to enforce various by-laws against excessive noise, idling of trucks, setting off fireworks and open air fires.² The Court granted that injunction the same day.

² King Affidavit at para 120.

12. In order to try to contain the Freedom Convoy's unlawful conduct, governments have been forced to take even more drastic steps:

- (a) On February 6, 2022, the City of Ottawa declared a state of emergency;³
- (b) On February 11, 2022, the Province of Ontario declared a statement of emergency;⁴
- (c) On February 14, 2022, the Government of Canada announced that it was invoking its powers under the *Emergencies Act*, RSC 1985, c. 22 (4th Supp). The Prime Minister stated that "It is no longer a lawful protest at a disagreement over government policy. It is now an illegal occupation. It's time for people to go home."⁵

13. These are exceptional measures, specifically implemented to try to deal with an unlawful protest inflicting harm on the residents and businesses of Ottawa. Despite these exceptional measures, the protests have continued largely unabated.

THE HARM TO CLASS MEMBERS

14. Since it began on January 28, 2022, the Freedom Convoy protest has substantially interfered with the Plaintiffs' and proposed class members' use and enjoyment of their homes and places of business.

15. The actions of those involved in the Freedom Convoy have had material adverse effects and consequences on those who live, work, or own businesses in close proximity to the

³ King Affidavit at para 118.

⁴ King Affidavit at para 119.

⁵ King Affidavit at para 121; Text of Prime Minister Trudeau's remarks, Exhibit "FFF" to the King Affidavit.

“Occupation Zone.”⁶ For example, one of the representative plaintiffs, Ms. Li, has been experiencing severe mental distress, suffering and torment. She has been unable to leave her home except when it cannot be avoided to obtain necessities. She is frightened of being harassed by the participants crowding the roads and sidewalks. She is not alone.

16. Downtown Ottawa business have also been affected. Local businesses have closed or reduced hours during the occupation. One of the proposed representatives of the Business Subclass has estimated that revenues for his restaurant have decreased between 25% and 50% since the arrival of the Freedom Convoy in Ottawa.⁷ The restaurant has experienced significant cancellations, and many of those who have canceled have cited the Freedom Convoy’s protest as the reason for the cancellation.⁸ While the restaurant is approximately 7 blocks from the horns, the sound is extremely disruptive, and is likely much worse for closer businesses.⁹ Trucks are occupying most of the available parking spaces nearby so diners have nowhere to park should they come to the restaurant.¹⁰

17. Some businesses that are closer to the heart of the Freedom Convoy occupation have closed completely,¹¹ and many businesses, are suffering huge losses everyday that the protests continue.¹²

18. The harm caused by the Freedom Convoy protest goes beyond the excessive and incessant noise of horns. The Freedom Convoy protest has interfered with virtually every aspect of the lives

⁶ The area occupied by the Freedom Convoy protest is described as the “Occupation Zone” in the proposed Fresh as Amended Statement of Claim.

⁷ Affidavit of Ivan Getz, sworn February 16, 2022 (“**Getz Affidavit**”) at para. 7.

⁸ Getz Affidavit, at para. 9.

⁹ Getz Affidavit at para. 13.

¹⁰ Getz Affidavit at paras. 11-12.

¹¹ Getz Affidavit at para. 15.

¹² Getz Affidavit at para. 18.

of the Plaintiff and all members of the proposed class. The City of Ottawa has warned residents to avoid non-essential travel in or around the downtown core.¹³

19. The direct recourse available to the Plaintiff and proposed classes is limited despite effectively being held hostage in their city. They cannot compel police action to enforce the multiple Orders that have already been sought and granted, nor can they force the government to take further action. Their only recourse is to try to preserve funds to compensate them for having to endure the Defendants' unlawful conduct.

THE PROPOSED CLASS PROCEEDING

20. The Statement of Claim in this proposed class action was first issued on February 4, 2022 (the "**Claim**"). It is in the process of being amended to add representative plaintiffs and expand the scope of the class and claims. The description below is based on the draft Amended Statement of Claim which is sought to be issued.

21. The claims as articulated in the Amended Claim include claims on behalf of a proposed class that includes three subclasses:

- (a) A proposed sub-class of residents who reside in the zone occupied by the Freedom Convoy protestors (the "**Resident Class Subclass**");
- (b) A proposed class of businesses who operate in the zone occupied by the Freedom Convoy protestors and who have experienced business losses as a result of the Freedom Convoy protest (the "**Business Subclass**"); and

¹³ Affidavit of Zexi Li, February 16, 2022, at para. 10.

- (c) A proposed class of employees who work as employees in the zone occupied by the Freedom Convoy protestors and have lost wages as a result of the Freedom Convoy protest (the “**Employee Subclass**”).

22. There are four proposed representative plaintiffs: (1) Zexi Li, a 21-year-old University of Ottawa student and representative of the Resident Subclass; (2) Happy Goat Coffee Company Inc, an Ottawa business that owns and operates several coffee kiosks and café locations, some of which are in the “Occupation Zone” and representative of the Business Class; (3) Union: Local 613, an Ottawa business that operates a restaurant within the “Occupation Zone” and an additional representative of the Business Class, and (4) Geoffrey Devaney, a restaurant worker who works as an employee, and representative of the Employee Class.

23. The Defendants in the action are:

- (a) A corporate Defendant called Freedom 2022 Human Rights and Freedoms (“**Freedom 2022**”). The stated purpose of Freedom 22 is “Advocacy against government.”
- (b) Several individual Defendants including:
 - (i) Directors of Freedom 2022, namely: Chris Barber, Benjamin Dichter, Tamara Lich, Chad Eros, Chris Garrah, Miranda Gasinor, and Sean Teissen;
 - (ii) Several organizers, leaders, or spokespeople of the Freedom Convoy protest, namely: Patrick King, James Bauder, Brigitte Belton, Daniel Bulford, Dale Enns, Joe Jansen, Jason LaFace, Tom Marazzo, Ryan Mihilewicz;

- (iii) Individuals involved in Freedom Convoy's fundraising efforts or who otherwise have control over assets being used to facilitate the Freedom Convoy protest, namely: Nicholas St. Louis;
 - (c) Sixty-two John and Jane Does who are drivers of semi-tractor trucks or trailer trucks parked downtown in the Ottawa core, who have been idling continuously and blasting horns as a form of protest, or who are funding the Freedom Convoy protest through donations with the knowledge that the Freedom Convoy participants are acting unlawfully.
24. The damages claimed against the Defendants in the Plaintiff's draft proposed Fresh as Amended Statement of Claim are as follows:
- (a) On behalf of the Resident Subclass, general damages for private nuisance and public nuisance, in the amount of \$36 million for pain and suffering and psychological distress;
 - (b) On behalf of the Business Subclass, special damages for private nuisance and public nuisance, in the amount of \$200 million for business losses;
 - (c) On behalf of the Employee Subclass, special damages for private nuisance and public nuisance, in the amount of \$60 million for loss of wages; and
 - (d) Punitive damages in the amount of \$10 million.

THE FREEDOM CONVOY'S ATTEMPTS TO EVADE ANY AUTHORITY

25. The Freedom Convoy's presence in Ottawa has been enabled through the significant fundraising efforts of Freedom Convoy organizers, including by some of the Mareva Respondents. Initially, those fundraising efforts proceeded through legitimate fundraising platforms, which provided some measure of oversight and accountability. Yet as the Freedom Convoy's unlawful tactics became increasingly obvious, legitimate fundraising platforms were no longer willing to support them. In turn, the Freedom Convoy's organizers have turned to other platforms which they perceive as lacking similar forms of oversight, in an effort to try to raise funds free from state authority.

(i) The GoFundme Campaign

26. The Freedom Convoy's fundraising efforts began on January 14, 2022, through GoFundMe. GoFundMe is a popular crowdfunding platform which allows, entities, individuals or non-profit organizations to post a fundraiser and accept monetary donations from donors on behalf of the fundraiser's beneficiary.¹⁴ The fundraising campaign was hugely successful, raising millions of dollars. On January 27, 2022, GoFundMe released \$1,000,000 to the organizers of the Freedom Convoy.¹⁵

27. On February 4, 2022, GoFundMe announced that the Freedom Convoy fundraising efforts were in violation of its Terms of Service, which prohibits the promotion of violence and

¹⁴ King Affidavit at para 50.

¹⁵ King Affidavit at para 51.

harassment. The fundraisers were removed from the platform.¹⁶ By this time, the Freedom Convoy 2022 campaign had generated over \$10 million in donations.¹⁷

28. Commercial banks have also recognized the harms of being associated with the Freedom Convoy. On February 11, 2022, TD Bank, which had apparently received \$1 million in funds from the Freedom Convoy 2022 GoFundMe campaign, started an interpleader application in the Superior Court of Justice at Toronto (Commercial List) seeking to pay those funds into Court.¹⁸

(ii) *The GiveSendGo Campaign*

29. Following GoFundMe's removal of their fundraiser, the Freedom Convoy turned to a different fundraising platform to accept donations: GiveSendGo LLC ("**GiveSendGo**"). As described below, GiveSendGo was a preferable platform, precisely because it declared that it would not cut off fundraising in the way that GoFundMe did.

30. The Freedom Convoy created two separate fundraising campaigns through GiveSendGo:

- (a) The Freedom Convoy 2022 fundraiser. It has raised at least USD \$9,303,731, and it is still active.
- (b) The Adopt-a-Trucker fundraiser. It has raised at least USD \$585,814, and it is still active.

31. On February 10, 2022, the Attorney General for Ontario brought an *ex parte* application in the Superior Court of Justice pursuant to s. 490.8(3.1) of the *Criminal Code of Canada* to restrain

¹⁶ King Affidavit at para 53.

¹⁷ King Affidavit at para 54.

¹⁸ King Affidavit at para 56.

monies being raised by two GiveSendGo fundraising campaigns: Freedom Convoy 2022 and Adopt-a-Trucker.¹⁹ The Court issued an order that same day, ordering that all persons—including GiveSendGo, Freedom 2022, and the Defendant Chris Garrah—be prohibited from “disposing of, or otherwise dealing with, in any manner whatsoever, any interest in the property.”

32. GiveSendGo has publicly flouted this order and said that “All funds for EVERY campaign on GiveSendGo flow directly to the recipients of those campaigns, not least of which is the [Freedom Convoy 2022] campaign.”²⁰

(iii) *Cryptocurrency Fundraising*

33. Since other crowdfunding efforts have been impeded, the organizers of the Freedom Convoy have started to direct their supporters to other fundraising methods, with a new emphasis on cryptocurrency.²¹

34. The Freedom Convoy organizers have been open and candid about their motivations for resorting to cryptocurrency. In their own words, they are using Bitcoin and other cryptocurrency because they believe it:

- (a) Is “noncensorable, nonconfiscatable, transferrable, portable [and] immutable”;²²
- (b) “could [be used to] easily and cheaply dispense funds across the tens of thousands of truckers making a stand against this border restriction in order to prolong their efforts until their demands are heard and hopefully met by the leaders of Canada”;

¹⁹ King Affidavit at para 60.

²⁰ King Affidavit at paras 64–65.

²¹ King Affidavit at para 73.

²² King Affidavit at para 72(c).

- (c) Facilitates the “self sovereignty of money”;²³
- (d) Is “the most difficult [asset] to censor or seize”;²⁴ and
- (e) Is “a hedge against centralized third parties”.²⁵

35. In other words, Freedom Convoy organizers have deliberately embraced Bitcoin and other cryptocurrencies as fundraising tools, precisely because they believe that it will be more secure from regulation or seizure.

36. The fundraising campaign has been very successful, with donations in the Tallycoin fundraising platform of approximately CAD \$1.175M.²⁶ The fundraising page appears to have been removed around 5:30 pm on February 14, 2022, with a message thanking the contributors, and a note that the Mareva Respondents Nicholas St. Louis and Benjamin Dichter would be “overseeing things moving forward.”²⁷ The evidence establishes that these funds have been deposited into a single Bitcoin wallet, following which the funds were distributed to 17 separate Bitcoin wallets.²⁸

(iv) The Dissipation of Funds Raised

37. Public statements and live videos of participants in the Freedom Convoy show that assets are being distributed by organizers to individuals involved in the continued occupation of Ottawa. Funds are currently being fundraised and distributed to the Freedom Convoy protestors for food,

²³ King Affidavit at para 72(a).

²⁴ King Affidavit at para 72(b).

²⁵ King Affidavit at para 72(b).

²⁶ King Affidavit at para 74.

²⁷ King Affidavit at para 75.

²⁸ King Affidavit at para 76.

lodging, shuttles, fuel, diesel exhaust fluid, truck repair, logistical needs and any “journey-related costs that truckers registered in the convoy may incur throughout their journey to and stay in Ottawa”.²⁹

38. The full details of the dissipation of the assets raised by the Freedom Convoy are detailed in the Affidavit of Jeremy King, the Plaintiff’s private investigator.³⁰ In brief, the evidence shows that the Freedom Convoy organizers have plans to imminently dissipate the funds raised by the Freedom Convoy 2022 fundraiser, and remove them from the reach of the Court. The intention is to use cryptocurrency (which they believe is beyond the reach of government authorities or the Court) and convert it into different forms of dispersible funds, including cash, direct transfers, and gift cards.

THE CONDUCT OF THE NAMED MAREVA RESPONDENTS

39. Each of the Mareva Respondents have played a central role in the Freedom Convoy’s unlawful conduct. They have also each held funds raised and/or intended to be used by the Freedom Convoy, as well as played a role in placing those funds beyond the reach of authorities.

(i) Patrick King

40. Patrick King describes himself as a leader of the Freedom Convoy 2022. He regularly posts videos on his Facebook page, many of which depict him giving instructions to protestors and discussing the leadership efforts of the Freedom Convoy 2022 protests.³¹ For example, on February 14, 2022, Mr. King appeared in a Facebook livestream and instructed protestors not to

²⁹ King Affidavit at para. 95.

³⁰ King Affidavit at paras 70-113.

³¹ King Affidavit at para 22.

leave.³² On February 12, 2022, Patrick King announced the launch of the “Freedom Convoy Token” or “\$FCT”). The stated purpose of using this alternate platform was to bypass the crowdfunding platforms previously used by the Freedom Convoy, and arose as a direct response to restrictions placed on King’s bank account and on GoFundMe.³³ On February 13, 2022, he announced via a Facebook Live video a new “foundation” called the “Freedom Convoy Foundation” for trading in cryptocurrency in support of the Freedom Convoy 2022.³⁴

41. Patrick King has stated that he is distributing cash to supporters for food, fuel, and hotels. For example, in a Facebook live video dated February 8, 2022, Mr. King explains that since he is no longer permitted to send or receive email money transfers on his personal bank account, he would pull cash out of his personal account to provide to the protestors.³⁵ On February 12, 2022, Mr. King posted a video depicting himself reviewing the receipts of a protestor and providing instructions on reimbursement.³⁶

42. Patrick King is physically located in Ottawa.³⁷

(ii) Tamara Lich

43. Tamara Lich has played a central role in the Freedom Convoy’s fundraising efforts and styles herself as the putative President of “Freedom Convoy 2022”.³⁸ She has been regarded as the public face and most visible leader of the Freedom Convoy against pandemic restrictions in

³² King Affidavit at para 129.

³³ King Affidavit at para 86.

³⁴ King Affidavit at para 23.

³⁵ King Affidavit at paras 88.

³⁶ King Affidavit at paras 96.

³⁷ King Affidavit at para 22.

³⁸ King Affidavit at para 10.

Ottawa, which have prompted Prime Minister Trudeau to declare a Public Order Emergency.³⁹ Ms. Lich has played a leading role in organizing the GoFundMe campaign that raised \$7.8 million before GoFundMe shut down the campaign following police reports of violence and other unlawful activity.⁴⁰ Thereafter, she announced the move to GiveSendGo, stating that it would “enable [the Freedom Convoy] to get donations in the hands of the truckers much much quicker.”⁴¹

44. Both these campaigns were cited by the Attorney General of Ontario as being vehicles used to raise money for offence-related property.⁴² When both crowd-funding platforms were frozen, she began soliciting Interac e-transfer donations under the email address: tbofconvoy2022@protonmail.com, which were directed to an account that she controlled.⁴³ As a Director of Freedom 2022, Ms. Lich is also suspected of holding one of the Nunchuk multisig wallets (i.e., type of Bitcoin wallet used to facilitate the distribution of monies obtained through Bitcoin to the truckers).⁴⁴

45. Ms. Lich confirmed that she was in Ottawa during a Facebook Live video on February 4, 2022, and that she planned on staying in Ottawa for the long haul until the truckers’ rights and freedoms were restored.⁴⁵

³⁹ Supplementary Affidavit of Jeremy King sworn February 16, 2022 (“King Supplementary Affidavit”) at para 37.

⁴⁰ King Supplementary Affidavit at para 37.

⁴¹ King Affidavit at para 57.

⁴² King Affidavit at Exhibit GG.

⁴³ King Affidavit at para 90 and Exhibit UU.

⁴⁴ King Affidavit at para 80 and Exhibit Q.

⁴⁵ King Affidavit at para 57 and Exhibit UU.

(iii) Chris Garrah

46. Chris Garrah is a key organizer of the Freedom Convoy and describes himself as the “Coordinator for Ground Zero”. Along with Ms. Lich, he has played a central role in the Freedom Convoy’s fundraising efforts, including:

- (a) Incorporating Freedom 2022 and acting as a Director of same;⁴⁶
- (b) Creating the GiveSendGo Adopt-a-Trucker fundraising campaign, which has raised over USD \$587,000.00;⁴⁷ and
- (c) Receiving the donations received through the adopt-a-trucker.ca website.⁴⁸

47. Mr. Garrah has been on the ground in Ottawa since the week of January 8, 2022.

(iv) Nicholas St. Louis (a.k.a. @Nobodycaribou)

48. Nicholas St. Louis is a resident of Ottawa who has been present throughout the protest.⁴⁹ He began fundraising Bitcoin for the Freedom Convey on or around January 27, 2022.⁵⁰ He has referred to himself as the “Bitcoin Team Lead” and the “primary liaison between the Bitcoin community and the directors of the Freedom Convoy nonprofit organization” and as the person “overseeing Bitcoin donations and off ramps to get funds to truckers”.⁵¹

49. Mr. St. Louis is one of the individuals who established the "Honkhonk Hodl" Bitcoin fundraiser through the TallyCoin website, which received donations of over SAT2.2B

⁴⁶ King Affidavit at paras. 7,8, 26,

⁴⁷ King Affidavit at para. 69.

⁴⁸ King Affidavit at paras. 69 and 72.

⁴⁹ King Affidavit at Exhibits A and S.

⁵⁰ King Affidavit at para 70.

⁵¹ King Affidavit at para 42

(approximately CAD\$1.175M).⁵² He now oversees the distribution of these funds⁵³ and has been reported as being one of the individuals who exclusively control Bitcoin donations.⁵⁴

50. He has stated that the Freedom Convoy protest turned their fundraising efforts towards Bitcoin because:

- (a) Bitcoin would allow the organizers “to receive global donations without any obstruction”;
- (b) Third party funders and the Canadian banking system have a “critical vulnerability”;
- (c) Bitcoin would be used to provide the Freedom Convoy organizers and participants with legal protection and enable them to hire lawyers both offensively and defensively; and
- (d) Bitcoin could be used to create an “endowment” for the truckers to reward them for their participation even after they departed from Ottawa.⁵⁵

51. On February 13, 2022, at 3:06 pm, Nicholas St. Louis posted a tweet linking to a YouTube video entitled “2.13.22 Freedom Convoy btc fund update”, detailing “[p]lans to distribute funds to truckers starting immediately” through an updated bitcoin wallet strategy.⁵⁶

⁵² King Affidavit paras 42 and 74.

⁵³ King Affidavit at para 75 and 94.

⁵⁴ King Affidavit at paras 40-41.

⁵⁵ King Affidavit at para 77.

⁵⁶ King Affidavit at para 79.

52. Although Nicholas St. Louis and Benjamin Dichter claimed to have had authority in a “multi sig” wallet⁵⁷ which held these funds, on February 14, 2022, those parties described efforts to place their signature authority out of their reach (in an unstated but inevitable quid pro quo) with persons unknown:

For security reasons, we found it to be important that the key holders are not publicly identifiable. There is a new multisig quorum now. Only Nobody Caribou and BJDichter (one of the truckers) are privy to who holds keys. Myself, Greg, and Jeff Booth no longer hold keys, as we were previously points of failure. We ran the risk of 3 key holders within Canada being coerced to give up the Bitcoin. This is no longer the case.⁵⁸

(v) Benjamin Dichter

53. Benjamin Dichter is a Director of Freedom 2022 Human Rights and Freedoms⁵⁹ and is a lead organizer and official spokesperson of the Freedom Convoy 2022.⁶⁰ Dichter is also one of the key individuals coordinating the cryptocurrency donations and distribution, appearing in videos with St. Louis explaining their decision to move to cryptocurrency and how the cryptocurrency funds will be distributed and utilized.⁶¹

54. Dichter is currently located in Ottawa, as evidenced by the affidavit he swore on February 7, 2022, in support of the Defendants responding record in the Honking Injunction.⁶²

⁵⁷ A cryptocurrency wallet which requires multiple signatures to disperse its funds.

⁵⁸ King Affidavit, Exhibit SS - “Bitcoin Fundraising for Ottawa Truckers Freedom Convoy Hits Close to One Million” published on the Bitcoin Magazine website on February 14, 2022.

⁵⁹ King Affidavit at para 8 and Exhibits B and C.

⁶⁰ King Affidavit at para 20 and Exhibit E.

⁶¹ King Affidavit at para 6 and Exhibit A.

⁶² Responding Supplementary Motion Record (Honking Injunction) at Tab 7, Affidavit of Benjamin Dichter sworn February 7, 2022. The affidavit was sworn in Toronto, but the content reflects that Dichter has been in Ottawa. See also King Supplementary Affidavit at para 38 and Exhibit F.

55. On February 14, 2022, Dichter announced that he was meeting with the CEO of a Bitcoin exchange later that same day with the hopes of “processing these Bitcoin donations, converting them into dollars and sending them to the bank accounts of the truckers who’ve been waiting patiently for some relief for some fuel, repairs, all that sort of stuff they needed.”⁶³

(vi) Freedom 2022 Human Rights and Freedoms Inc

56. The defendant non-profit corporation, Freedom 2022 Human Rights and Freedoms (“**Freedom 2022**”), was incorporated on January 30, 2022, by Chad Eros and Chris Garrah. Its stated purpose is “Advocacy against government”.⁶⁴ Freedom 2022 is the recipient of funds raised through the GiveSendGo fundraiser “Freedom Convoy 2022.”⁶⁵ The Attorney General of Ontario had reasonable grounds to believe that the monies raised through the Freedom 2022 were offence-related property and facilitating an indictable offence of mischief that would continue to be committed for so long as there are funds available to keep protestors and their trucks in Ottawa.⁶⁶ Consequently, Freedom 2022 was subject to the restraining order of funds by the Superior Court of Justice on February 10, 2022.⁶⁷

57. The Freedom Convoy 2022 campaign page (which acknowledged that the funds would be received by the non-profit Freedom 2022) stated that it was asking for donations to help with the costs of fuel first, and hopefully food and lodgings to help ease the pressures of the arduous task. It also stated that it would be sending donations directly to its bulk fuel supplier and working out

⁶³ King Affidavit at para 82.

⁶⁴ King Affidavit at para 7.

⁶⁵ King Affidavit at para 9.

⁶⁶ King affidavit at paras 61-63 and Exhibit GG.

⁶⁷ King Affidavit at para 63.

details to ensure donors hard earned money would be going straight to who it was meant for in order for the generous donations to flow smoothly.⁶⁸

58. The registered office for Freedom 2022 is located at 1493 Leeds and Grenville 2, Mallorytown, Ontario, K0E 1R0.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

59. The sole question on this motion is whether a *Mareva* injunction should be issued. For the reasons below, it should.

THE TEST FOR A MAREVA INJUNCTION

60. Section 101(1) of the *Courts of Justice Act* provides the court with jurisdiction to grant an interlocutory injunction or mandatory order, “where it appears to a judge of the court to be just or convenient to do so.”⁶⁹ A *Mareva* injunction is an equitable remedy, which evolves as facts and circumstances merit.⁷⁰ It is granted pre-trial to restrain a party in pending litigation from removing assets from the jurisdiction or dissipating assets, the effect of which would be to avoid judgment.

The following factors must be considered in deciding whether to issue a *Mareva* injunction:

- (a) The Plaintiff must satisfy the Court that it has a strong *prima facie* case;
- (b) The Plaintiff must show that there will be irreparable harm if the injunction is not granted. In the context of the *Mareva* injunction, this is typically done by showing that there is a real risk of the assets being removed out of the jurisdiction or disposed

⁶⁸ Affidavit of Jeremy King at para 46 and Application of Attorney General of Ontario, Exhibit GG of Affidavit of Jeremy King.

⁶⁹ *Courts of Justice Act*, [RSO 1990, c C.43, s 101](#).

⁷⁰ *SFC Litigation Trust (Trustee of) v. Chan*, [2017 ONSC 1815](#) at para. [29](#). See also *Mareva Compania Naviera S.A. v International Bulkcarriers Ltd.*, [1975] [2 Lloyd's Rep. 509](#) (C.A.)

of within the jurisdiction or otherwise dealt with so that the plaintiff will be unable to satisfy a judgment awarded to him or her; and

- (c) The Plaintiff must satisfy the Court that the balance of convenience is in its favour;
- (d) Where the *Mareva* injunction is sought *ex parte*, the Plaintiff must also make full and frank disclosure of all material matters within his or her knowledge.

61. In this case, the Plaintiff satisfies all the requirements for a *Mareva* Order.

62. The strict rules requiring assets in the jurisdiction has been abandoned, and in certain cases, courts will grant “world-wide” *Mareva* orders provided there is *in personam* jurisdiction over the party whose assets are to be frozen.⁷¹ This Court has explained that the factors are “guidelines for the Court to consider as opposed to rigid criteria.”⁷²

63. In assessing the evidence in support of the *Mareva* injunction, the Court is permitted to rely on hearsay evidence, which is expressly made admissible on a motion. Rule 39.01(4) provides that “[a]n affidavit for use on a motion may contain statements of the deponent’s information and belief, if the source of the information and the fact of the belief are specified in the affidavit.” Importantly, this is expressly broader than the hearsay on either an application, where hearsay is limited to non-contentious matters, or a summary judgment motion, where the Rules empower the Court to draw an adverse inference from the use of hearsay.⁷³ Courts have routinely admitted and

⁷¹ *SFC Litigation Trust (Trustee of) v. Chan*, [2017 ONSC 1815](#)

⁷² *Ekaterina Ivanova Karpacheva v. Valery Vladimirovich Karpachev*, [2018 ONSC 4563](#) at para. 34.

⁷³ *Ontario Rules of Civil Procedure*, [RRO 1990, Reg 194](#), ss [20.02\(1\)](#), [39.01\(5\)](#).

relied on hearsay evidence in motions for interlocutory injunctions, including *Mareva* injunctions.⁷⁴

THE PLAINTIFFS HAVE A STRONG PRIMA FACIE CASE

64. The standard of a strong *prima facie* case does not require that the Plaintiffs prove their case. The Plaintiffs must instead demonstrate that on a balance of probabilities, they are likely to succeed.⁷⁵

65. As this section describes:

- (a) The Plaintiffs have a strong claim on behalf of the proposed class members in respect of a private nuisance (a nuisance on one's own land);
- (b) The Plaintiffs have a strong claim on behalf of the proposed class members in respect of public nuisance (interference with the life, health, property of comfort of the public);
- (c) The *Mareva* Respondents against whom this *Mareva* injunction is sought are likely to be found liable for such conduct; and
- (d) The value of assets sought to be secured by the *Mareva* is modest compared to the likely quantum of damages.

⁷⁴ *O2 Electronics Inc. v. Sualim*, [2014 ONSC 5050](#) at para [101](#); *Ontario Securities Commission v. 1367682 Ontario Ltd. (De Freitas & Associates)*, [2008 CanLII 23949](#) (ON SC); *Sole Cleaning Inc. v. Chu*, [2020 ONSC 7226](#) at para [64](#); *Re Osztrovics (No.1)*, [2014 ONSC 1567](#) at paras [35-36](#); *Ontario v. Rothmans Inc.*, [2011 ONSC 2504](#) at para [140](#); *Ekaterina Ivanova Karpacheva v. Valery Vladimirovich Karpachev*, [2018 ONSC 4563](#) at para [4](#).

⁷⁵ *Voysus Connection Experts Inc v Shaikh*, [2019 ONSC 6683](#) at para [56](#).

(i) Private Nuisance

66. Private nuisance is the substantial and unreasonable interference with the use of land, which must rise to the level of being intolerable to an ordinary person. Factors considered in this assessment include: the nature, severity, and duration of the interference, the character of the neighbourhood, the sensitivity of the plaintiff's use, and the utility of the activity causing the nuisance. Such interference can be caused by intentional, negligent, or non-faulty conduct. Liability in nuisance focuses on harm suffered rather than prohibited conduct.⁷⁶ Regardless of the Defendants' intentions, nuisance focuses on the effect of the Defendants' (and Mareva Respondents') conduct on the Plaintiffs and the class.⁷⁷

67. The private nuisance in this case is the use of air horns which gave rise to the Honking Injunction, and which persisted even after the Honking Injunction. Ms. Li testified that from within her apartment, she was inundated with the sounds of horns from morning until night at recorded sound levels of as high as 84 decibels within her apartment.⁷⁸ The noise itself caused Ms. Li harm including anxiety and sleep deprivation.⁷⁹

(ii) Public Nuisance

68. While a private nuisance only affects particular individuals, a public nuisance affects citizens generally. However, as Lord Romer held in *AG v PYA Quarries Ltd*, public nuisance is also conceptualized and can be established as "large collection of private nuisances":

[I]n general, however, a public nuisance is proved by the cumulative effect which it is shown to have had on the people living within its sphere of

⁷⁶ *St. Lawrence Cement Inc v Barrette*, [2008 SCC 64](#) at para [77](#).

⁷⁷ *French v. Chrysler*, [2014 ONSC 4573](#) at [para. 20](#).

⁷⁸ Affidavit of Zexi Li, sworn February 4, 2022 ("February 4, 2022 Li Affidavit") at paras 6-7.

⁷⁹ February 4, 2022 Li Affidavit at paras 8-9.

influence. In other words, a normal and legitimate way of proving a public nuisance is to prove a sufficiently large collection of private nuisances.⁸⁰

69. A public nuisance is “any activity which unreasonably interferes with the public’s interest in questions of health, safety, morality, comfort or convenience”. The conduct complained of “must amount to ... an attack upon the rights of the public generally to live their lives unaffected by inconvenience, discomfort and other forms of interference”.⁸¹

70. Standing to bring a claim of public nuisance requires plaintiffs to plead that they have suffered special damage as compared to other members of the public.⁸²

71. The Freedom Convoy is a public nuisance. This is evident by the various states of emergency declared by each level of government. Loud and aggressive demonstrators and parked vehicles have blocked access to sidewalks and roadways. Diesel fumes from hundreds of idling vehicles have polluted the air.⁸³

72. It is well established that conduct which obstructs or impedes access to, or otherwise unreasonably interferes with, access to public highways constitutes a public nuisance.⁸⁴ The creation of excessive traffic congestion as a result of the obstruction of public highways can independently be said to be a public nuisance.⁸⁵

⁸⁰ *AG v PYA Quarries Ltd* [1957] 1 All ER 894 (CA) at 908. See *Hollick v Metropolitan Toronto (Municipality)* (1999), 46 OR (3d) 257 (Ont CA) at paras 28–29 aff’d on other grounds 2001 SCC 68.

⁸¹ *Ryan v Victoria (City)*, [1999] 1 SCR 201 (SCC) at para 52.

⁸² *Ryan v Victoria (City)*, [1999] 1 SCR 201 (SCC) at para 52.

⁸³ February 14, 2022 Li Affidavit at para 8.

⁸⁴ *Ryan v Victoria (City)*, [1999] 1 SCR 201 (SCC) at para 52; *George v Newfoundland and Labrador*, 2016 NLCA 24 at para 79. See also s 447.1(b)(ii) of the *Ontario Municipal Act, 2001*, SO 2001, c 25, which defines a public nuisance as including “interference with the use of highways and other public places”.

⁸⁵ *Attorney-General for Ontario v Orange Productions Ltd et al* (1971), [1971] 3 O.R. 585 (Ont HCJ).

73. Ms. Li and the downtown residents of the proposed class have suffered a special damage compared to other members of the public. Member of the public in general have had their access to public spaces in downtown Ottawa impeded. For Ms. Li and the residents of downtown Ottawa, the nuisance is right outside of their residences. It has caused their local businesses, including the two main grocery stores in the neighborhood to close. Ms. Li is frightened of being harassed by the Freedom Convoy protesters. As a downtown resident, it means she is unable to leave her home except when it can't be avoided to obtain necessities.⁸⁶ For the very same reasons, the conduct has harmed the members of the Business Subclass and the Employee Subclass.

74. Each of the activities constitutes a substantial and unreasonable interference with a right common to all members of the community and an attack upon the rights of the public generally to live their lives unaffected by inconvenience, discomfort, or other forms of interference.⁸⁷ Each of these impugned activities constitutes a public nuisance on its own, let alone as part of a sustained and coordinated effort to occupy and control large portions of downtown Ottawa.

(iii) The Mareva Respondents' Liability for Private and Public Nuisance

75. Each of the Mareva Respondents has engaged in wrongful conduct that renders them personally liable to the Plaintiffs and proposed class.

76. The Defendants and Mareva Respondents are also liable as joint tortfeasors based on their common design to occupy downtown Ottawa and engage in tortious conduct. As the Supreme Court of Canada found in *Fullowka v Royal Oak Ventures Inc.*, “concerted action liability may be

⁸⁶ February 14, 2022 Li Affidavit at paras 8-11.

⁸⁷ *Ryan v Victoria (City)*, [1999] 1 SCR 201 (SCC) at para 52.

imposed where the alleged wrongdoers act in furtherance of a common design.”⁸⁸ Where all participants act in furtherance of the wrong, even if they do not realize they are committing a tort, they can be held jointly liable.⁸⁹

77. **Patrick King**—Mr. King has held himself out as a leader of the Freedom Convoy 2022.⁹⁰ Via numerous social media posts, Patrick King has directed protestors, including directing them not to leave on February 14, 2022.⁹¹ On February 12, 2022, Patrick King announced the launch of the **\$FACT** for the stated purpose of using this alternate platform as a means to bypass the crowdfunding platforms previously used by the Freedom Convoy, and arose as a direct response to restrictions placed on King’s bank account and on GoFundMe.⁹² Mr. King has also distributed funds to protestors directly, enabling their participation in the protest.⁹³

78. **Tamara Lich**—Ms. Lich is understood to be a campaign organizer of the GoFundMe and GiveSendGo campaigns for the Freedom Convoy 2022, and is appointed a Director of Freedom 2022, which that the Attorney General of Ontario found reasonable grounds to believe were vehicles used to raise money for offence-related property.⁹⁴ In particular, on February 4, 2022, GoFundMe released a statement advising that it had evidence from law enforcement that the previously peaceful demonstration associated with the campaign that Ms. Lich had organized had become an occupation, with police reports of violence and other unlawful activity.⁹⁵ This activity

⁸⁸ *Fallowka v. Royal Oak Ventures Inc.*, [2010 SCC 5](#) at para. [154](#).

⁸⁹ *British Columbia v. Apotex Inc.*, [2022 BCSC 1](#) at para. [110](#). See also *Insurance Corp. of British Columbia v. Alexander*, [2016 BCSC 1108](#) at paras. [28-43](#).

⁹⁰ King affidavit at para 22.

⁹¹ King affidavit at para 129

⁹² King Affidavit at paras 72(d), 86 and 111.

⁹³ King affidavit at para 88 and 96.

⁹⁴ King Affidavit at Exhibit GG.

⁹⁵ Application Record of the Attorney General of Ontario dated February 10, 2022, at para 40.

was serious enough to warrant a declaration of an emergency by the Federal government on February 14, 2022 due to the continued blockades by both persons and motor vehicles and the continuing threats to oppose measures to remove the blockades.⁹⁶ Ms. Lich also confirmed that she planned on staying in Ottawa for the protests for the long haul until the truckers rights and freedoms were restored.⁹⁷

79. **Chris Garrah**—Mr. Garrah is the creator of the adopt-a-trucker.ca website.⁹⁸ The website describes its goal as to “support the overwhelming amount of trucks arriving in the city. We provide all the local services from First Aid, to room and board. We are not supported by the Freedom Convoy's GoFundMe or GiveSendGo donations as it has always been designated to the fuel trucks and vehicle logistics. We source our own volunteers and funding.”⁹⁹ In a January 28, 2022 interview, Mr. Garrah also confirmed he is the “Coordinator for Ground Zero” and that he “can’t see the truckers leaving until they get what they want.”¹⁰⁰

80. **Nicholas St. Louis (a.k.a. @Nobodycaribou)**—Mr. St. Louis has acted as the “primary liaison” between the Bitcoin community and directors of Freedom 2022 and has described himself as the person “overseeing Bitcoin donations and off ramps to get funds to truckers” to enable them to continue their occupation in Ottawa.¹⁰¹ He began these fundraising efforts specifically for the Freedom Convoy on or around January 27, 2022.¹⁰² In a video entitled “Freedom Convoy Bitcoin press release (2.9.22)”, Mr. St. Louis explained that the Freedom Convoy protest would be

⁹⁶ Federal Government’s Emergency Orders in Council, Exhibit A to King Supplementary Affidavit.

⁹⁷ King Affidavit at para 57 and Exhibit UU.

⁹⁸ King Affidavit at para 92.

⁹⁹ King Affidavit at para. 69.

¹⁰⁰ King Supplementary Affidavit at para 37.

¹⁰¹ King Affidavit at para 42.

¹⁰² King Affidavit at para 70.

soliciting Bitcoin donations in order “to receive global donations without any obstruction” for the purpose of “hiring lawyers offensively and defensively” and providing a “Bitcoin endowment for truckers.”¹⁰³ He has previously characterized Bitcoin as being beyond the reach of authorities since it “is uncensorable, permissionless and when you custody it properly its unconfiscatable.”¹⁰⁴

81. **Benjamin Dichter**—Mr. Dichter has repeatedly encouraged the Freedom Convoy protests to continue. On February 13, 2022, Mr. Dichter addressed the crowd in Ottawa on behalf of the Freedom Convoy 2022 organizers, praising the work of the protestors and encouraging the protest to continue. Mr. Dichter stated, “[Canadians] are extremely peaceful and loving. But then there’s the hockey rink. And our politicians have entered the hockey rink now. And we’re not going to be pushed around.”¹⁰⁵

82. **Freedom 2022 Human Rights and Freedoms Inc**—Freedom 2022’s stated purpose is “advocacy against government”. The Attorney General of Ontario had reasonable grounds to believe that the monies raised through the Freedom Convoy 2022 were offence-related property and facilitating an indictable offence of mischief that would continue to be committed for so long as there are funds available to keep protestors and their trucks in Ottawa.¹⁰⁶ Consequently, Freedom 2022 was subject to the restraining order of funds by the Superior Court of Justice on February 10, 2022.¹⁰⁷ It is centrally involved in facilitating the unlawful conduct.

¹⁰³ King Affidavit at paras 6 & 77 and Exhibit A.

¹⁰⁴ King Affidavit at paras 109 and 112.

¹⁰⁵ King Supplementary Affidavit at para. 36.

¹⁰⁶ King affidavit at paras 61-63 and Exhibit GG.

¹⁰⁷ King Affidavit at para 63.

(iv) Quantum of Damages

83. For the resident subclass, the original Statement of Claim claimed \$4.8 million in private nuisance, plus punitive damages, or the damage suffered by the resident subclass to that date. This was calculated at \$100 per day for each class member for the incessant honking caused by the Freedom Convoy.¹⁰⁸

84. The Amended Statement of Claim now covers a geography which includes approximately 12,000 proposed class members. If each of the 12,000 class members were to be awarded \$300 per day for 10 days for damages for public and private nuisance, those damages amount to the \$36 million claimed.

85. The amounts claimed are reasonable in comparison to other private nuisance cases. In *Motoplex Speedway*,¹⁰⁹ the defendant built and operated a motorcar racetrack next to a residential neighbourhood. The plaintiffs experienced extremely loud noise in the range of 86 decibels on their property, interfering with their use and enjoyment, for a few hours per day, to a maximum of 18 days per year.¹¹⁰ For this experience, the Court awarded damages of \$5,000 to \$7,500, or approximately \$50 to \$80 per day for the plaintiffs.¹¹¹

86. The private nuisance that the Plaintiffs and the proposed class have endured is unquestionably more significant than in *Speedway*. The nuisance the Plaintiffs have endured is

¹⁰⁸ Original Statement of Claim at para 66.

¹⁰⁹ 469238 BC Ltd (Lawrence Heights) v Okanagan Aggregates Ltd (Motoplex Speedway and Event Park), [2016 BCSC 721](#).

¹¹⁰ 469238 BC Ltd (Lawrence Heights) v Okanagan Aggregates Ltd (Motoplex Speedway and Event Park), [2016 BCSC 721](#) at paras [30](#) and [56](#).

¹¹¹ 469238 BC Ltd (Lawrence Heights) v Okanagan Aggregates Ltd (Motoplex Speedway and Event Park), [2016 BCSC 721](#) at paras [187–188](#). The court does not break it down by day, but the damages are based on noise from 2003 to 2015, with the days per year noted at para [30](#).

daily, more frequent, interrupting sleep, and during a time when many individuals are working from home.

87. There is little jurisprudence on the quantum of public nuisance damages, given that public nuisance can be proven by establishing multiple private nuisances.¹¹² However, public nuisance damages must be approached in the same manner as in private nuisance cases. Courts must also ensure that the quantum in public nuisance cases adequately recognizes both the widespread nature of the harm caused and the public nature of the rights that were impeded.

88. The claims on behalf of the business subclass and the employee subclass are larger still. On behalf of the Business Subclass, the Amended Claim seeks special damages for private nuisance and public nuisance in the amount of \$200 million for business losses. On behalf of the Employee Subclass, it seeks special damages in the amount of \$60 million for loss of wages.

89. These damages are difficult to quantify precisely at an early stage. However, it has been reported that the Rideau Centre alone has been incurring losses of \$3 million per day during the Freedom Convoy Protests.¹¹³ The economic harm to both business and employees is substantial.

90. This motion seeks to freeze up to \$20 million in assets. This is substantially less than the quantum of damages sought in the Statement of Claim, as the evidence available indicates that the quantum of assets that can be frozen is a fraction of the amount sought. However, the fact that only \$20 million is sought to be frozen also bolsters the Plaintiff's requested relief. Even if the

¹¹² *AG v PYA Quarries Ltd* [1957] 1 All ER 894 (CA) at 908. See *Hollick v Metropolitan Toronto (Municipality)* (1999), 46 OR (3d) 257 (Ont CA) at paras 28–29 aff'd on other grounds 2001 SCC 68.

¹¹³ King Affidavit, at para. 117, Exhibit CCC.

Court ultimately quantifies damages at a fraction of the amount sought in the claim, the sheer number of people affected means that the damages will exceed \$20 million.

91. In *KRP Enterprises Inc v Ontario Provincial Police Commissioner*, a class of residents and business owners and contractors who were adversely affected by the 2006 protests and blockades in Caledonia, Ontario – pertaining to a land claim dispute over a housing development – settled with the Defendants for \$20 million in 2011.¹¹⁴ The scale of that demonstration, in an Ontario town of approximately 9,500 people, pales in comparison to the scale of this protest in the nation’s capital.

(v) A Mareva injunction can be issued pre-certification

92. This proposed class proceeding has not yet been certified. Mareva injunctions in class proceedings are relatively rare, primarily because most class proceedings are started against deep-pocketed defendants against whom recovery is not an issue. However, there is no dispute that a Mareva injunction can be ordered to preserve the assets available to the proposed class to recover, even in advance of certification. For example, an *ex parte* Mareva injunction was issued pre-certification in *Boal v. International Capital Management Inc.*, and Justice Perell specifically confirmed that it had been appropriately made.¹¹⁵

¹¹⁴ While the settlement approval motion for this class action does not appear to be publicly reported, the website for class members’ notifications discloses the amount of the settlement: <https://caledoniaclassaction2020.com/>. The decision certifying the class proceeding can be found at *KRP Enterprises Inc v Ontario Provincial Police Commissioner*, [2010 ONSC 901](#).

¹¹⁵ *Boal v. International Capital Management Inc.*, [2018 ONSC 2275](#). See also *Tracy v. Instalogs Financial Solutions Centres (B.C.) Ltd.*, [2007 BCCA 481](#), where a Mareva injunction was ordered in a certified class proceeding.

IRREPARABLE HARM AND EVIDENCE OF THE RISK OF DISSIPATION

93. A second requirement of any interlocutory injunction is that there be irreparable harm. In the context of a *Mareva* injunction in particular, irreparable harm is established by showing that there is a risk that assets will be dissipated, such that the plaintiff will not be able to recover funds if they are ultimately successful.

94. This criterion is easily met. As this section describes:

- (a) There is a wealth of evidence that the Freedom Convoy and its organizers generally have no intention of preserving funds to satisfy any judgment that might be rendered against them;
- (b) Each of the *Mareva* Respondents against whom this *Mareva* injunction is sought have held or are presently holding funds for the Freedom Convoy; and
- (c) Each of the *Mareva* Respondents against whom this *Mareva* injunction is sought have themselves demonstrated an intention to take or have taken steps to dissipate assets or help the Freedom Convoy try to put assets beyond the reach of state authority.

(i) The Freedom Convoy's Dissipation of Assets

95. The purpose of a *Mareva* injunction is to ensure that there are assets available to satisfy any judgment that might be rendered against the Defendants and that available assets are not dissipated in the interim. There can be no question that, without intervention by this Court, the Freedom Convoy and its organizers will have no appreciable assets left to satisfy any judgment. There are two reasons for this.

96. First, the Freedom Convoy is expressly raising money to be used for short-term goals. The Freedom Convoy and its fundraising operations did not exist before January 2022, and there is no indication of any long-term plan to hold onto a war chest for the long term. Rather, the whole purpose of the fundraising is to pay the monies out to sustain the protest. The organizers of the fundraising for the Freedom Convoy have made it very clear in recent days that they are organizing themselves to ensure that the funds go to the protesters and become as inaccessible as possible to Courts or governments trying to secure the funds. The very nature of the operation is dissipative.

97. Second, the Freedom Convoy is turning to fundraising tools that it believes are beyond the jurisdiction of governments and the Courts, such as cryptocurrencies. Cryptocurrency is a form of digital currency. Bitcoin is one of the most popular cryptocurrencies. A bitcoin wallet and its credential can be controlled by an individual or by companies that use it. A personal wallet can be compared to a pocket wallet: only the person holding the wallet can transact out of it. Only the persons who control the credential of a wallet can operate the wallet.¹¹⁶

98. As described above, there is a wealth of evidence that they have turned to cryptocurrencies such as Bitcoin precisely because they believe that it will allow them to evade governmental restriction.

99. Moreover, the way the cryptocurrency is being held by the Freedom Convoy is structured so as to try to avoid the oversight of the Court. Greg Foss, one of the participants in the Freedom Convoy fundraising efforts, explained how the signatories on the multisig Bitcoin wallet were changed out of a concern for “the war measures” so that the Organizers will be assured that the

¹¹⁶ Affidavit of Rich Sanders sworn February 15, 2022 (“Sanders Affidavit”), Expert Report at paras 7-15.

authorities cannot “require you to sit down and under duress divulge who the other keyholders are.”¹¹⁷ Similarly, on February 14, 2022, Benjamin Perrin, who allegedly assist the Freedom Convoy organizers with settling up, gave an interview in which he stated:

There is a new multisig quorum now. Only Nobody Caribou [Mr. St. Louis] and BJ Dichter (one of the truckers) are privy to who holds keys. Myself, Greg [Foss] and Jeff Booth no longer hold keys, as we were previously points of failure. **We ran the risk of 3 key holders within Canada being coerced to give up the Bitcoin. This is no longer the case.**¹¹⁸

100. These public statements are supported by how it is observed the funds were structured. As the Plaintiff’s cryptocurrency expert Rich Sanders explained, “the manner of structuring the funds may suggest a general dissipation of assets and an increased risk of noncompliance with a Court’s Freeze Order.”¹¹⁹

101. That is not the conduct of a group of individuals who show any intention of ensuring that their assets are available if a judgment is ordered against them. Rather, it is the conduct of individuals who are deliberately trying to keep funds away from creditors.

102. While the belief of Freedom Convoy organizers that cryptocurrencies are not subject to the jurisdiction of this court is incorrect (as described in more detail below), courts have recognized the greater risks of dissipation associated with cryptocurrencies. The nature of cryptocurrency has been the subject of scrutiny of the legal profession in recent years. The anonymity of certain blockchain structures, the speed by which cryptocurrency can be transferred, their borderless nature, and stringent privacy policies adopted by some cryptocurrency exchanges present inherent

¹¹⁷ Affidavit of Jeremy King at para 72 (c).

¹¹⁸ Affidavit of Jeremy King at para 84.

¹¹⁹ Sanders Affidavit, Report at para 22.

challenges in securing these assets.¹²⁰ Such difficulties can be and are leveraged by “unscrupulous individuals as a means of hiding assets and transactions.”¹²¹

103. The inherent challenges in securing cryptocurrency were recognized by the British Columbia Supreme Court in *Shair.Com Global Digital Services Ltd. V. Arnold*, which made the following observations in respect of cryptocurrency:

Given the nature of digital currencies and difficulty in tracking ownership of digital wallets, I am satisfied that there is a reasonable apprehension that the currencies may be transferred outside of the jurisdiction. The special considerations and risks that arise in respect to electronic information were commented on by the court in *Yaghi v. WMS Gaming Inc.*, 2003 ABQB 680, at paragraph 49.¹²²

104. In assessing the risk of dissipation, the court was satisfied that “there [was] a risk of dissipation of any digital assets, being the digital currencies and related wallet information, again given the unique nature of electronic data.”¹²³ In other words, the nature of digital currencies renders them more liable to dissipation.

105. A similar observation was made by the England and Wales High Court, who observed that “...because of the very nature of Bitcoin they can be moved at the click of the mouse and therefore steps should be taken for the proprietary injunction to come to the attention of the account at the

¹²⁰ Gregory Azeff, Stephanie De Caria, Matthew McGuire, “Governing the Ungovernable: Cryptocurrencies in Insolvency Proceedings,” 2018 ANNREVINSOLV 9 at p 1, 4, 8-9, and 12.

¹²¹ Gregory Azeff, Stephanie De Caria, Matthew McGuire, “Governing the Ungovernable: Cryptocurrencies in Insolvency Proceedings,” 2018 ANNREVINSOLV 9 at p 1.

¹²² *Shair.Com Global Digital Services Ltd v. Arnold*, [2018 BCSC 1512](#) at para 16.

¹²³ *Shair.Com Global Digital Services Ltd. v. Arnold*, [2018 BCSC 1512](#) at para 24. The British Columbia Supreme Court did not ultimately grant the Mareva as the Plaintiffs had also sought a preservation order in respect of the funds at issue. In the circumstances, the court found that a Mareva was not necessary as the funds would be preserved via other means. The court was not satisfied that non-Bitcoin assets were at risk of dissipation.

exchange at which the Bitcoin are held at the earliest possible opportunity.”¹²⁴ The Court in *AA v Persons Unknown* froze the cryptocurrency assets.

106. Considering the evidence before this Court and the volatile nature of this asset, there is little doubt a real risk of imminent dissipation exists. Both the specific intention to dissipate, and the deliberately chosen means of dissipation, have been publicly announced by certain of the Defendants. Given the substantial quantum of the Plaintiff’s claim (and the proposed claims), the risk that the Plaintiff (and the proposed classes) would suffer irreparable harm is apparent.

(i) The Mareva Respondents have held Freedom Convoy Funds

107. Each of the Mareva Respondents has held assets raised in connection with the Freedom Convoy.

108. **Patrick King**—Mr. King has stated that he is distributing cash to protestors for food, fuel, and hotels¹²⁵ and has been recorded on video doing so.¹²⁶ On February 12, 2022, Patrick King launched the Freedom Convoy Token as a means to bypass the crowdfunding platforms previously used by the Freedom Convoy, and arose as a direct response to restrictions placed on King’s bank account and on GoFundMe.¹²⁷ The new cryptocurrency was sold through an exchange called Pancake Swap and transactions involving \$FCT will allegedly generate passive income to support the Freedom Convoy Foundation.¹²⁸ On February 13, 2022, he announced via a Facebook Live

¹²⁴ *AA v Persons Unknown*, [2019] EWHC 3556 at para 77.

¹²⁵ King Affidavit at paras 88.

¹²⁶ King Affidavit at para 96

¹²⁷ King Affidavit at paras 86 and 111.

¹²⁸ King Affidavit at para 85.

video a new “foundation” called the “Freedom Convoy Foundation” for trading in cryptocurrency in support of the Freedom Convoy 2022.¹²⁹

109. **Tamara Lich**—Ms. Lich was listed as the “Organizer” of the GoFundMe fundraiser.¹³⁰ She is a Director of Freedom 2022, the non-profit that is understood to be holding the monies obtained through fundraising, including the GiveSendGo platforms.¹³¹ When crowd-funding platforms were shut down, she began soliciting Interac e-transfer donations under the email address: tbefconvoy2022@protonmail.com, which was directed to an account that she controlled.¹³² As a Director of Freedom 2022, Ms. Lich is also suspected of holding one of the Nunchuk multisig wallets (i.e., type of Bitcoin wallet used to facilitate the distribution of monies obtained through Bitcoin to the truckers).¹³³

110. **Chris Garrah**—Through the Adopt-a-Trucker website, Mr. Garrah has solicited donations in cryptocurrency, including Bitcoin, Ethereum, and Litecoin.¹³⁴ Mr. Garrah has also encouraged the donation of funds on-the-ground, explaining that “the best way to make sure your donation is received, is always to arrive yourself in Ottawa and hand deliver the aid, or sponsor someone from your community”.¹³⁵

111. **Nicholas St. Louis (a.k.a. @Nobodycaribou)**—Mr. St. Louis is one of five individuals that exclusively control the Bitcoin donations as he is one of the five signers on the “multisig

¹²⁹ King Affidavit at para 23.

¹³⁰ King Affidavit at para 50 and Exhibit Y.

¹³¹ King Affidavit at para 11 and Exhibit C.

¹³² King Affidavit at para 90 and Exhibit UU.

¹³³ King Affidavit at para 80 and Exhibit Q.

¹³⁴ King Affidavit at para 93.

¹³⁵ King Affidavit at para 26.

wallet”, which hold the Bitcoin donations.¹³⁶ An article published in Bitcoin Magazine on February 14, 2022 went on to confirm that only Mr. St. Louis and Mr. Dichter were privy to who held the keys of the new multisig wallet.¹³⁷ The HonkHonk Hodel Twitter account also confirmed that Mr. St. Louis and Mr. Dichter would be “overseeing things moving forward”, indicating that they were in control of or in possession of these wallets containing funds for Freedom Convoy 2022.¹³⁸

112. **Benjamin Dichter**—Dichter is one of five individuals that exclusively control the Bitcoin donations¹³⁹ and is one of two individuals who knows the identity of the key holders.¹⁴⁰ Honkhonk Hodl published a statement on February 14, 2022 stating that the TallyCoinApp fundraiser was completed and Dichter, along with St. Louis, would be “overseeing things moving forward.”¹⁴¹ There is little doubt that Dichter has control or possession of the wallets this injunction seeks to freeze.

113. **Freedom 2022 Human Rights and Freedoms Inc**—Freedom 2022 is listed as the recipient of funds raised through the GiveSendGo fundraiser “Freedom Convoy 2022.”¹⁴² The Attorney General of Canada stated that it had reasonable belief that Freedom 2022 was in possession of the monetary donations made to Freedom Convoy 2022. On February 13, 2022, it

¹³⁶ King Affidavit at paras 40-41 and Exhibits O & P.

¹³⁷ King Affidavit at para 84 and Exhibit SS.

¹³⁸ King Affidavit at para 94 and Exhibit RR.

¹³⁹ King Affidavit at para 40 and Exhibit O.

¹⁴⁰ King Affidavit at para 84 and Exhibit SS.

¹⁴¹ King Affidavit at para 75 and Exhibit RR.

¹⁴² King Affidavit at para 9 and Exhibits B & C.

was announced that Nunchuk multisig wallets would be created with the directors of Freedom 2022 in order to facilitate the distribution of monies obtained through Bitcoin to the truckers.¹⁴³

114. While the assets targeted by this *Mareva* injunction were received primarily through donations, the money donated to the Freedom Convoy was gifted and is now owned by the Mareva Respondents. The requirements of a gift are well established. First, there must be “an intention to make a gift on the part of the donor, without consideration or expectation of remuneration”. Second, the gift must have been accepted by the donee.¹⁴⁴ Absent donee rejection, the law presumes acceptance. Title in the property gifted is vested immediately in the donee subject to the donee’s right of repudiation, even when the donee is not aware of the gift.¹⁴⁵ Finally, there must be “a sufficient act of delivery or transfer of the property to complete the transaction.”¹⁴⁶

115. In this case, the circumstances evidence the satisfaction of all three requirements. The donors’ intention is evidenced by the voluntary nature of the donations; they each provided their credit card information, effected e-transfers, or otherwise provided their own money to the Mareva Respondents.¹⁴⁷ There is no evidence that consideration or other remuneration was promised. Moreover, the fact that the donations were solicited,¹⁴⁸ the Mareva Respondents have been controlling and distributing the donations,¹⁴⁹ so the donations were accepted. Moreover, the fact

¹⁴³ King Affidavit at para 80 and Exhibit Q.

¹⁴⁴ *McNamee v McNamee*, [2011 ONCA 533](#) at para 24, aff’g *Cochrane v Moore* (1890), [25 QBD 57](#) (Eng QB) at 72–73.

¹⁴⁵ *Walsh v Walsh*, [1948] 1 DLR 630, [1947 CanLII 79](#) (ON SC) at para 53. See *McNamee v McNamee*, [2011 ONCA 533](#) at para 48; *Butler v Baker* (1591) 3 Co Rep 25a, 76 ER 684 (Eng); *Cook v Lister* (1863), 143 ER 215 (Eng) per Willes J at 595.

¹⁴⁶ *McNamee v McNamee*, [2011 ONCA 533](#) at para 24, aff’g *Cochrane v Moore* (1890), [25 QBD 57](#) (Eng QB) at 72–73.

¹⁴⁷ King Affidavit at paras 50, 56, 58, 73, 90.

¹⁴⁸ King Affidavit at paras 6, 50, 57, 74–75, 92–93.

¹⁴⁹ King Affidavit at paras 40–49, 78–82, 85–87, 90, 94–102; King Supplementary Affidavit at paras 4–7.

that the donations were solicited,¹⁵⁰ the Mareva Respondents are in control of and have been organizing and distributing the donations,¹⁵¹ so the donations were accepted. Finally, delivery was effected when the funds arrived in bank accounts or bitcoin wallets controlled by the Mareva Respondents, or otherwise when the Defendants retained control over the funds.

(ii) *The Mareva Respondents' Intention to Dissipate Assets*

116. Each of the Mareva Respondent has demonstrated that they are willing and ready to help dissipate assets.

117. **Patrick King**—Mr. King has personally extolled the virtues of cryptocurrency as a way of evading the government's regulatory authority. As he explained in a FaceBook Live video, the organizers view cryptocurrency as a “way they can't touch it.”¹⁵² It is viewed as “noncensorable, nonconfiscatable, transferrable, portable, [and] immutable.”¹⁵³ Mr. King has stated that he is distributing cash to protestors for food, fuel, and hotels.¹⁵⁴

118. **Tamara Lich**—Ms. Lich expressed in a Facebook live video on February 4, 2022, that they would be teaming up with GiveSendGo to “enable us to get donations in the hands of the trucks much...quicker”.¹⁵⁵

119. **Chris Garrah**—Mr. Garrah is the creator of the GiveSendGo Adopt-a-Trucker fundraiser. He incorporated Freedom 2022 for the purposes of collecting donations solicited through that

¹⁵⁰ King Affidavit at paras 6, 50, 57, 74–75, 92–93.

¹⁵¹ King Affidavit at paras 40–49, 78–82, 85–87, 90, 94–102; King Supplementary Affidavit at paras 4–7.

¹⁵² Affidavit of Jeremy King at para 86.

¹⁵³ Affidavit of Jeremy King at para 72 (c).

¹⁵⁴ Affidavit of Jeremy King at paras 88 and Exhibit TT.

¹⁵⁵ King Affidavit at para 57 and Exhibit UU.

campaign.¹⁵⁶ Mr. Garrah is also the creator of the adopt-a-trucker.ca website, which solicits cash and cryptocurrency donations in support of the Freedom Convoy.¹⁵⁷ As of February 14, 2022, Adopt-a-Trucker had raised over USD \$578,000.¹⁵⁸

120. **Nicholas St. Louis (a.k.a. @Nobodycaribou)**—On February 13, Mr. St. Louis stated on YouTube update that the express intention of raising funds was to disseminate them as soon as possible to truckers:

So let's talk about getting funds to the truckers. Right now we're working closely with a well known Bitcoin only Canadian exchange to begin getting funds to individual truckers. As some of you may know, TD has been compromised. TD Bank and has frozen \$1.4 million of donations to the truckers from some of which were from the GoFundMe, some of which were from GiveSendGo, so we can't start sending those, and the remaining GiveSendGo funds are currently in limbo, and lawyers are fighting to make them available to the truckers. **But in the meantime, we can start using the bitcoin. So options that we're going to offer the truckers.**

We're going to offer to pay their credit card bill, and we can even actually overpay, uhm, their credit card bills so that they have cash available to withdraw. We're also going to be using etransfers, direct bank deposits, and potentially gift cards, so those are the current offramps that we're going to be offering to truckers. We're going to start to gather information from individual truckers about their financial needs, and **if all goes to plan, we're going to be able to begin sending funds within 48 hours** if all goes smooth. So, like I said, with the fiat donations being held up illegally, like basically by corruption, because this is a legal - people have a legal right to peacefully assemble, and Canadians have a legal right to support Canadians doing legal activities. So it really is frivolous. And you know, Bitcoin really has become the only method of distributing funds, and it can't be stopped.¹⁵⁹

121. On February 15, 2022, Mr. St. Louis announced a plan to distribute the Bitcoin to 200 protestors and explicitly noted that the Organizers were accelerating efforts to disperse the digital

¹⁵⁶ King Affidavit at para 7.

¹⁵⁷ King Affidavit at paras 92-93.

¹⁵⁸ King Affidavit at para 59.

¹⁵⁹ Affidavit of Jeremy King at para 80.

funds in light of the Federal Government's Declaration of a Public Order Emergency and planned on distributing all Bitcoin funds to truckers by the "end of week P2P on the ground in Ottawa".¹⁶⁰ A subsequent Twitter post described the process by which Mr. St. Louis intended to disperse Bitcoin directly to the protestors by generating 200 digital wallets and providing recipients with paper instructions to recover funds with the aim to distribute the Bitcoin funds by mid next week.¹⁶¹ On February 16, 2022, a source close to Mr. St. Louis confirmed that he would working with GiveSendGo to have their frozen funds distributed in Bitcoin.¹⁶²

122. **Benjamin Dichter**—Mr. Dichter has similarly expressed the intention to dissipate funds as soon as possible. Dichter noted that one of the primary reasons to move to cryptocurrency was to eliminate intermediaries that could hold the funds: "maybe this is the moment for Bitcoin and for people to learn about self-sovereignty of money."¹⁶³ In other interviews, Dichter noted he would be meeting imminently with the CEO of a Bitcoin exchange so that they "will be processing these Bitcoin donations, converting them into dollars and sending them to the bank accounts to the truckers who've been waiting patiently for some relief for some fuel, repairs, all that sort of stuff that they needed."¹⁶⁴

123. **Freedom 2022 Human Rights and Freedoms Inc**—The Freedom Convoy 2022 campaign page (which acknowledged that the funds would be received by the non-profit Freedom 2022) stated that it was asking for donations to help with the costs of fuel first, and hopefully food and lodgings to help ease the pressures of the arduous task. It also stated that it would be sending

¹⁶⁰ King Supplementary Affidavit at paras 6 & 7.

¹⁶¹ King Supplementary Affidavit at para 9.

¹⁶² King Supplementary Affidavit at para 13.

¹⁶³ King Affidavit at para para 72(a) and Exhibits "LL" and MM; see also King Affidavit at para 109 and Exhibit A.

¹⁶⁴ King Affidavit at Exhibit MM.

donations directly to its bulk fuel supplier and working out details to ensure donors hard earned money would be going straight to who it was meant for in order for the generous donations to flow smoothly.¹⁶⁵

THE BALANCE OF CONVENIENCE FAVOURS THE GRANT OF THE MAREVA INJUNCTION

124. The harm to the Plaintiffs that would occur were the Mareva Respondents to put assets beyond the reach of the Court outweighs any harm that will be suffered by the Mareva Respondents in the meantime.¹⁶⁶

125. The inconvenience to the Mareva Respondents from the proposed order is minimal. None of the Individual Mareva Respondents' personal assets unrelated to the Freedom Convoy are sought to be frozen in connection with this Order. The Order sought will not interfere with their day-to-day lives.¹⁶⁷

126. Moreover, the terms of the proposed *Mareva* order provide several safeguards that minimize the hardship on the defendants. In particular, under the Order:

- (a) While the Order is being sought *ex parte*, the Order provides that it only lasts for 10 days unless extended. The Plaintiffs will need to apply again, on notice, to extend the Order further. At that time, all of the Mareva Respondents can raise any issues they might have about the Order.

¹⁶⁵ Affidavit of Jeremy King at para 46 and Application of Attorney General of Ontario, Exhibit GG of Affidavit of Jeremy King.

¹⁶⁶ *East Guardian SPC v Mazur*, [2014 ONSC 6403](#) at para 49.

¹⁶⁷ For clarity, the Plaintiff may seek to ultimately recover any person assets the individual defendants may have after judgment. However, the Plaintiff does not at this stage seek to enjoin the use of those personal assets by way of a *Mareva* injunction.

- (b) The Mareva Respondents can apply to the Court to vary the Order at any time.
- (c) The Mareva Respondents can secure the amounts sought to be frozen with other funds.

127. By contrast, the harm to the residents, businesses, and employees of Ottawa will be significant. Failing to grant the order would substantially impair their likelihood of making any meaningfully recover at the end of this lawsuit.

NO UNDERTAKING AS TO DAMAGES IS REQUIRED IN THIS CASE

128. Given the significant public interest engaged by this claim, it is appropriate to dispense with the requirement to give an undertaking as to damages. Courts have repeatedly waived this requirement in cases that concerned the broader public interest and human rights, rather than commercial or pecuniary interests.¹⁶⁸

129. It is also appropriate to dispense with the requirement to give an undertaking because of this action's nature as a class proceeding. Courts have waived the requirement to give an undertaking for plaintiffs who act in a representative capacity for a broader class of claimants, on the reasoning that it would be unfair to force a representative plaintiff to risk their personal assets in such a circumstance.¹⁶⁹

¹⁶⁸ See, for example, *Cardinal v Cleveland Indians Baseball*, [2016 ONSC 6929](#); *Romana v The Canadian Broadcasting Corporation et al*, [2017 MBQB 163](#); *True North Disability Services Ltd v Canada (National Revenue)*, [2021 BCSC 2142](#); *Poff v City of Hamilton*, [2021 ONSC 7224](#).

¹⁶⁹ *Tracy v Instalogs Financial Solutions Centres (B.C.) Ltd.*, [2006 BCSC 1018](#), aff'd in part *Tracy v Instalogs Financial Solutions Centres (B.C.) Ltd.*, [2007 BCCA 481](#); *Knott v University of Saskatchewan*, [1999 SKQB 186](#); *Maybank Foods Inc Pension Plan v. Gainers Inc.* (1988), 63 O.R. (2d) 687 (Ont HCJ).

THIS COURT CAN GRANT AN ENFORCEABLE ORDER

130. Notwithstanding the efforts the Mareva Respondents are taking to avoid the reach of this Court, an enforceable order can be granted. There are two important points in this regard.

131. First, the Plaintiffs have limited the current *Mareva* injunction sought solely to the Mareva Respondents, each of whom are currently present within Ontario. This Court has presence-based jurisdiction over each of them. Rather, the proposed *Mareva* injunction has been limited to only those entities over which this Court's jurisdiction and the enforceability of its orders is clear. While the *Mareva* order may in some respects implicate assets outside of Ontario, such assets are commonly impacted by *Mareva* orders, provided the Court has jurisdiction over the respondents to the injunction. Indeed, worldwide *Mareva* injunctions are now common.¹⁷⁰

132. Second, the order sought is enforceable. The order seeks to enjoin the Mareva Respondents and others from dealing with their assets. While some of the assets sought to be enjoined are in the form of Bitcoin, that can be properly enjoined. As the Plaintiff's cryptocurrency expert has explained, orders are routinely issued to preclude both individuals and cryptocurrency exchanges from transacting in Bitcoin.¹⁷¹ Moreover, because Bitcoin transactions are publicly visible, it is in fact easy to determine if there has been a breach of the Court's order and, if so, where funds were transferred to and when.

¹⁷⁰ *SFC Litigation Trust (Trustee of) v. Chan*, [2017 ONSC 1815](#) at para 38; *Google Inc v Equustek Solutions Inc*, [2017 SCC 34](#) at para. 38.

¹⁷¹ Courts have granted preservation or freezing orders in respect of cryptocurrencies. In Canada, this occurred in *Shair.Com Global Digital Services Ltd v. Arnold*, [2018 BCSC 1512](#). Courts in Canada have confirmed that cryptocurrencies are indeed "property", which can even be traced when transferred to third parties (see *Copytrack Pte Ltd. v Wall*, [2018 BCSC 1709](#) at para. 35). Other jurisdictions have routinely granted preservation and freezing orders in respect of cryptocurrencies. As examples see, *AA v Persons Unknown*, [\[2019\] EWHC 3556](#).

133. While the Bitcoin itself does not exist in any jurisdiction at all, the Court's order is not directed at the Bitcoin itself. Rather, the Court's order is directed at individuals and entities who have the ability to deal in Bitcoin. As described above, all of the parties sought to be enjoined from dealing in Bitcoin are within the Court's jurisdiction.

THE PLAINTIFF HAS MADE FULL AND FRANK DISCLOSURE

134. A party seeking an *ex parte* order is required to make full and frank disclosure of all material facts and defenses available to the defendant. The Mareva Respondents could be expected to assert the following:

- (a) The conduct in which the Defendants and Mareva Respondents engage is a friendly, lawful, respectful and peaceful protest, free of violence or harassment;
- (b) The Defendants and Mareva Respondents have no intent to intimidate, harass, or cause harm to members of the public during this peaceful protest;
- (c) The Freedom Convoy is a diverse and inclusive group of friendly, courteous, humble, helpful, considerate and peaceful people who are representative of Canadians, including some people who have brought their children to the protest, and religious people who worship while at the protest;
- (d) The Freedom Convoy protesters have been welcoming and supportive of counter-protesters, going out of their way to create a perimeter to ensure that counter-protesters can protest comfortably;

- (e) Those persons who have been arrested to date are not associated with the Freedom Convoy movement, nor are lone wolves who espouse their views loudly and disruptively, including using megaphones;
- (f) Protesters are seeking change, and their signs reflect that rather than the symbols of hate being reported by the media;
- (g) The Freedom Convoy protest includes former police officers who are in regular communication with Ottawa police and forward any public safety concerns to their attention in order to ensure public safety and security;
- (h) The Freedom Convoy participants are providing a public good or benefit because they are, among other things, improving the downtown core by shoveling snow, cleaning garbage, feeding the homeless, lowering crime, removing graffiti, actively protecting, guarding and taking care of monuments including the War Memorial and Terry Fox statue, and otherwise engaging with the community;
- (i) No harm or damage has come to any members of the public through the conduct of the Defendants or Mareva Respondents in particular, and residents' lives have not been disrupted;
- (j) The honking is not constant nor particularly disruptive and has not prevented residents from sleeping, because it is not sufficiently loud and because it ceases at night;
- (k) Following the Honking Injunction, certain of the Mareva Respondents encouraged Freedom Convoy protestors to stop honking;

- (l) Travel into the downtown area has not been obstructed and/or has never been easier, parking is readily available, and emergency routes have been kept clear;
- (m) The media is framing the Freedom Convoy and events surrounding its presence in Ottawa in an unfavourable, erroneous, and distorted manner;
- (n) The Mareva Respondents do not control or direct the actions of the Freedom Convoy participants, and they do not personally know most of the participants, nor have they had prior contact;
- (o) This Court does not have jurisdiction to order an injunction over some or all of the assets named in the Order;
- (p) The Mareva Respondents do not control, directly or indirectly, the assets named in the Order;
- (q) To the extent the Mareva Respondents are the owners of any of the assets sought to be captured by this *Mareva* injunction, the Mareva Respondents are only holding those assets in trust;
- (r) The order would be unenforceable against the cryptocurrency assets;
- (s) There is no evidence that the Mareva Respondents have, will, or intend to dissipate the assets named in the Order;
- (t) The evidence concerning spending on protest-related material is ordinary course and not evidence of dissipation;

- (u) The Mareva Respondents are merely exercising their constitutional rights to freedom of expression and peaceful assembly, and granting this injunction would stifle their Charter rights;
- (v) The Court's further order is unnecessary because of the recent federal and provincial orders and injunctive relief issued by the Court;
- (w) In some cases, courts have refused to grant a *Mareva* injunction where no individual undertaking as to damages is given;¹⁷² and
- (x) There is jurisprudence that suggests class actions for nuisance cannot be certified, including *Preston v Hilton*¹⁷³ and *Grant v St. Lawrence Seaway Authority*.¹⁷⁴

135. Although this factum addresses many of the issues which may be raised by the Mareva Respondents, the Plaintiff is prepared to address each of them in oral argument if necessary.

136. Ultimately, none of the above arguments, or evidence should dissuade this Court from granting the injunctive relief requested in this case.

¹⁷² Note that in *Tracy v. Installoys Financial Solutions Centres (B.C.) Ltd.*, [2007 BCCA 481](#), the Court of Appeal for British Columbia set aside a *Mareva* injunction as against individual defendants, though not against the corporate entity involved, for a lack of undertaking as to damages. However, in that case, the main concern of the court a lack of prima facie evidence of their liability as well as a lack of evidence of an intention to dissipate – both factors which have been established here. Furthermore, the Court maintained the *Mareva* against the corporate defendant – for which there was sufficient evidence of liability – despite the representative Plaintiff's lack of an undertaking as to damages. In the circumstances of this case, where the other prongs of the *Mareva* test are clearly met and the Plaintiff seeks narrow relief, no undertaking should be given.

¹⁷³ *Preston v Hilton* [\(1920\), 55 DLR 647 \(Ont SC\)](#).

¹⁷⁴ *Grant v St Lawrence Seaway Authority*, [\[1960\] OR 298 \(Ont CA\)](#). However, the law has evolved since these cases and now recognizes class actions for nuisance where there is a clear universal question that applies to all plaintiffs. See *Kirk v Executive Flight Centre Fuel Services Ltd*, [2019 BCCA 111](#) at paras [78–80](#). See also *KRP Enterprises Inc v Ontario Provincial Police Commissioner*, [2010 ONSC 901](#).

PART IV - ORDER REQUESTED

137. The Plaintiffs respectfully request:

- (a) An interim and *interlocutory* Mareva order in the form attached as Schedule “A”
the Notice of Motion against the Mareva Defendants;
- (b) An Order dispensing with service of any materials relied on in support of the
Motion;
- (c) An Order providing that service of the Order granted pursuant to this Notice of
Motion and the related materials, may be served by way of email or through social
media on certain parties bound by the Order; and
- (d) Such further and other relief as counsel may request and to this Honourable Court
may seem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of February, 2022.



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Acting as Agent to Champ & Associates, Counsel
for the Plaintiff, Zexi Li

SCHEDULE “A”

LIST OF AUTHORITIES

1. *O2 Electronics Inc. v. Sualim*, [2014 ONSC 5050](#)
2. *Ontario Securities Commission v. 1367682 Ontario Ltd. (De Freitas & Associates)*, [2008 CanLII 23949](#) (ON SC)
3. *Sole Cleaning Inc. v. Chu*, [2020 ONSC 7226](#)
4. *Re Osztrovics (No.1)*, [2014 ONSC 1567](#)
5. *Ontario v. Rothmans Inc.*, [2011 ONSC 2504](#)
6. *Ekaterina Ivanova Karpacheva v. Valery Vladimirovich Karpachev*, [2018 ONSC 4563](#)
7. *Voysus Connection Experts Inc v Shaikh*, [2019 ONSC 6683](#)
8. *St. Lawrence Cement Inc v Barrette*, [2008 SCC 64](#)
9. *AG v PYA Quarries Ltd* [\[1957\] 1 All ER 894 \(CA\)](#)
10. *Hollick v Metropolitan Toronto (Municipality)* [\(1999\), 46 OR \(3d\) 257 \(Ont CA\)](#)
11. *Ryan v Victoria (City)*, [\[1999\] 1 SCR 201 \(SCC\)](#)
12. *George v Newfoundland and Labrador*, [2016 NLCA 24](#)
13. *Attorney-General for Ontario v Orange Productions Ltd et al* [\(1971\), \[1971\] 3 O.R. 585 \(Ont HCJ\)](#)

14. *Fullock v. Royal Oak Ventures Inc.*, [2010 SCC 5](#)
15. *British Columbia v. Apotex Inc.*, [2022 BCSC 1](#)
16. *Insurance Corp. of British Columbia v. Alexander*, [2016 BCSC 1108](#)
17. *469238 BC Ltd (Lawrence Heights) v Okanagan Aggregates Ltd (Motoplex Speedway and Event Park)*, [2016 BCSC 721](#)
18. *KRP Enterprises Inc v Ontario Provincial Police Commissioner*, [2010 ONSC 901](#).
19. *Boal v. International Capital Management Inc.*, [2018 ONSC 2275](#)
20. *Tracy v. Instalogs Financial Solutions Centres (B.C.) Ltd.*, [2007 BCCA 481](#)
21. *Shair.Com Global Digital Services Ltd v. Arnold*, [2018 BCSC 1512](#)
22. *AA v Persons Unknown*, [\[2019\] EWHC 3556](#)
23. *McNamee v McNamee*, [2011 ONCA 533](#)
24. *Walsh v Walsh*, [1948] 1 DLR 630, [1947 CanLII 79](#) (ON SC)
25. *Butler v Baker* (1591) 3 Co Rep 25a, 76 ER 684 (Eng)
26. *Cook v Lister* (1863), 143 ER 215 (Eng)
27. *East Guardian SPC v Mazur*, [2014 ONSC 6403](#)
28. *Cardinal v Cleveland Indians Baseball*, [2016 ONSC 6929](#)

29. *Romana v The Canadian Broadcasting Corporation et al*, [2017 MBQB 163](#)
30. *True North Disability Services Ltd v Canada (National Revenue)*, [2021 BCSC 2142](#)
31. *Poff v City of Hamilton*, [2021 ONSC 7224](#)
32. *Tracy v Instalogs Financial Solutions Centres (B.C.) Ltd.*, [2006 BCSC 1018](#)
33. *Knott v University of Saskatchewan*, [1999 SKQB 186](#)
34. *Maybank Foods Inc Pension Plan v. Gainers Inc.* (1988), 63 O.R. (2d) 687 (Ont HCJ)
35. *SFC Litigation Trust (Trustee of) v. Chan*, [2017 ONSC 1815](#)
36. *Mareva Compania Naviera S.A. v International Bulkcarriers Ltd.*, [1975] [2 Lloyd's Rep. 509](#) (C.A.)
37. *Google Inc v Equustek Solutions Inc*, [2017 SCC 34](#)
38. *Copytrack Pte Ltd. v Wall*, [2018 BCSC 1709](#)
39. *Preston v Hilton* [\(1920\)](#), 55 DLR 647 (Ont SC)
40. *Grant v St Lawrence Seaway Authority*, [\[1960\] OR 298 \(Ont CA\)](#)
41. *Kirk v Executive Flight Centre Fuel Services Ltd*, [2019 BCCA 111](#)

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Courts of Justice Act, RSO 1990, c C.43

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

Ontario Municipal Act, 2001, SO 2001, c 25

Closing premises, public nuisance

447.1 (1) Upon application of a municipality, the Superior Court of Justice may make an order requiring that all or part of a premises within the municipality be closed to any use for a period not exceeding two years if, on the balance of probabilities, the court is satisfied that,

- (a) activities or circumstances on or in the premises constitute a public nuisance or cause or contribute to activities or circumstances constituting a public nuisance in the vicinity of the premises;
- (b) the public nuisance has a detrimental impact on the use and enjoyment of property in the vicinity of the premises including, but not limited to, impacts such as,
 - (i) trespass to property,
 - (ii) interference with the use of highways and other public places,

(iii) an increase in garbage, noise or traffic or the creation of unusual traffic patterns,

(iv) activities that have a significant impact on property values,

(v) an increase in harassment or intimidation, or

(vi) the presence of graffiti; and

(c) the owner or occupants of the premises or part of the premises knew or ought to have known that the activities or circumstances constituting the public nuisance were taking place or existed and did not take adequate steps to eliminate the public nuisance. 2006, c. 32, Sched. A, s. 184.

[...]

ZEXI LI

Plaintiff

-and-

CHRIS BARBER, BENJAMIN
DICTER, TAMARA LICH, PATRICK KING and
JOHN DOES 1-60
Defendants

Court File No. CV-22-00088514-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT OTTAWA

Proceedings under the *Class Proceedings Act*, 1992

FRESH AS AMENDED FACTUM OF THE PLAINTIFFS
(*MAREVA* INJUNCTION)

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